IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4100 of 2006

Date of Decision: 16.01.2006

Hira Lal ...Petitioner

Vs.

Lodha Rajput Society (Regd.) ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Shakti Bhardwaj, Advocate,
for the petitioner.

Mr. J.K.Goel, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against an order passed by the learned Rent Controller as affirmed by the learned Appellate Authority ordering eviction of the petitioner herein from Shop No.4 situated in Mandir Murti Radha Kishan and Shivji, Bakra Market, Vakilpura, Sadar Bazar, Karnal on the ground of non-payment of rent.

The respondent-landlord had sought eviction of the petitioner on the ground of non-payment of rent. Keeping in view the fact that the

petitioner had taken a stand that Lodha Rajput Society was not competent or authorised to receive the rent, therefore, the petition was not maintainable. However, the petitioner deposited Rs.5400/- along with costs and interest on the first date of haring and it was claimed that the balance stood paid. However, learned Rent Controller did not assess the provisional rent payable keeping in view the fact that the petitioner had taken a stand in the written statement that the respondent herein was not authorised to receive the rent. However, the stand taken by the petitioner was not such where the relationship of landlord and tenant was denied. Only the authority of the respondent herein to accept the rent was challenged and that also stood negatived when the petitioner actually, in fact, deposited the rent which according to him was due and therefore, in view of the law laid down by the Hon'ble Supreme Court in **Rakesh Wadhawan & Ors. Vs. Jagdamba Industrial Corporation and Ors. 2002 (5) SCC 440** it was incumbent upon the Rent Controller to have assessed the rent provisionally and give opportunity to the petitioner to pay the same to the landlord.

Learned counsel for the petitioner contended that as the impugned order is in violation of the law laid down by the Hon'ble Supreme Court this revision deserves to be accepted.

The learned counsel appearing for the respondent by relying upon the judgment reported as **Ram Kumar and another Vs. Avinash Chander and others 2005 (1) HRR 401** contended that there was no necessity to give an opportunity to the petitioner to deposit the rent after assessing the same provisionally, in view of the fact that the petitioner had denied the relationship of landlord and tenant and therefore the judgment of Hon'ble Supreme Court in **Rakesh Wadhawan's case (supra)** was not

applicable in this case.

I have considered the arguments raised by the learned counsel for the parties and find that the relationship of landlord and tenant was not denied. The only objection raised was with regard to the authority of the petitioner to receive the rent. It may further be noticed that in spite of said objection having been taken the rent payable was deposited by the petitioner which was accepted by the respondent-landlord though under protest. Learned counsel for the respondent, however, submitted that the rent deposited was Rs.900/- and not Rs.5400/- as claimed by the petitioner. Whether the rent deposited was Rs.900/- or Rs.5400/- would not make any material difference as the learned Rent Controller was bound to assess the rent provisionally in view of the judgment of Hon'ble Supreme Court in the case of **Rakesh Wadhawan's case (supra).** The learned Rent Controller was thereafter bound to give an opportunity to the petitioner to deposit the said amount within stipulated period.

Accordingly, this revision is allowed and the impugned order is set aside and the case is remanded back to the learned Rent Controller to assess the rent and thereafter give opportunity to the petitioner to deposit the same. Thereafter, the matter be proceeded with in accordance with law.

(Vinod K.Sharma)
Judge

16.01.2007
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